

law negligence claim, set out in the fourth cause of action, pursuant to Fed. R. Civ. P. 12(b)(1) because Defendant is entitled to Eleventh Amendment immunity from liability, and the Court lacks subject matter jurisdiction over that claim. Defendant sought dismissal of the Title VII and Equal Pay Act causes of action, pursuant to Fed. R. Civ. P. 12(b)(6), arguing Plaintiff failed to allege sufficient facts to state plausible claims for relief on each of those causes of action.

In the August 24, 2012 Order, the Court granted Defendant's motion to dismiss the fourth cause of action (pendent negligence claim) for lack of subject matter jurisdiction, as set forth in detail in the August 24 Order. Leave to amend regarding that cause of action was denied. The Court granted the Rule 12(b)(6) motion to dismiss the first, second, and third causes of action, finding Plaintiff's factual allegations insufficient to state plausible claims for relief. With respect to the fifth cause of action asserting a separate claim based on unlawful Title VII retaliation, the Court denied the motion to dismiss, finding the factual allegations sufficient to avoid a Rule 12(b)(6) dismissal.

With respect to the first, second, and third causes of action, the Court authorized Plaintiff leave to amend to cure the specific deficiencies set out in the Order.

Defendant now contends the Second Amended Complaint should be dismissed in whole or in part because 1) Plaintiff reasserts the pendent state negligence claim which was dismissed by the Court without leave to amend; and 2) Plaintiff's amended allegations do not cure the deficiencies noted in the Court's Order as to the first, second, and third causes of action.

Discussion:

With respect to the pendent state negligence claim set out in the fourth cause of action, Defendant is correct that the Court's Order dismissing this cause of action did not authorize Plaintiff

leave to amend. The Court expressly found that leave to amend would be futile. Order [Doc. No. 22] at p. 23. In response to the current motion, Plaintiff concedes that this cause of action should have been omitted from the Second Amended Complaint. Plaintiff offers no justification for its inclusion except the vague statement that she did not want to waive the claim. This cause of action is deemed stricken from the Second Amended Complaint.

With respect to the claims asserted in the first, second, and third causes of action, the Court will not repeat in detail the lengthy discussion in the Order noting the deficiencies in the allegations supporting these causes of action in the Amended Complaint. Generally, the primary deficiencies were related to Plaintiff's failure to allege the time period on which they are based, as both Title VII and Equal Pay Act claims are restricted by specific limitations periods. Defendant contends the Second Amended Complaint does not cure these deficiencies because Plaintiff continues to assert vague allegations from which the dates of various actions cannot be determined. Plaintiff is reminded that she may pursue only those claims which are timely according to the requirements of the statute on which she relies, and allegations based on actions outside the scope of the applicable limitations period cannot be pursued. However, the Court concludes that the allegations in the second and third causes of action, asserting claims based on Title VII retaliation and Equal Pay Act violations, respectively, are sufficient to withstand the motion to dismiss.

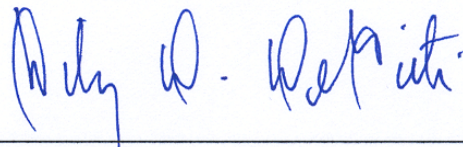
Defendants also argue that the Second Amended Complaint fails to cure the pleading deficiencies addressed by the Court with regard to Plaintiff's gender and national origin claims in the first cause of action. The Court notes, however, that the first cause of action in the Second Amended Complaint has omitted the national origin claim, and is now limited to an allegation of employment discrimination based on race and gender. While Plaintiff's allegations continue to be

more directed at her gender than her race, the Court concludes that they are sufficient to withstand the motion to dismiss.

Conclusion:

For the foregoing reasons, the motion to dismiss [Doc. No. 24] the Second Amended Complaint is granted in part and denied in part. The motion is granted as to the fourth cause of action, and is denied as to the remainder of the claims in the Second Amended Complaint. Instead of further delaying these proceedings by requiring additional amendments, the Court directs that this action will proceed on the first, second, third, and fifth causes of action in the Second Amended Complaint. Defendant shall file its Answer according to the deadline prescribed by the Federal Rules of Civil Procedure.

IT IS SO ORDERED this 26th day of February, 2013.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE